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Supreme Court U.S.
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No. 08-243

IN THE
Supreme Court of the United States

DEBRA L. THOMAS

Petitioner

v.

EVANSVILLE VANDERBURGH SCHOOL CORPORATION, BOARD OF SCHOOL TRUSTEES OF THE EVANSVILLE VANDERBURGH SCHOOL CORPORATION, PAT LOGE, SALLY KIVETT, JAMES TRADER, THOMAS HIGGS AND SHARON TURPIN,

Respondents,

ON PETITION FOR A WRIT CERTIORARI OF THE UNITED STATES COURT OF APPLEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR REHEARING

DEBRA THOMAS
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PETITION FOR REHEAR

Pursuant to Rule 44.2, Petitioner Debra L. Thomas respectfully petition for Rehearing of the Court's November 02. 2008, decision, specifically, Petitioner claim against the Respondents' were in good faith that demonstrates a Constitutional violation of Petitioner's Fourteenth due process right. This Petition for Rehearing is intended to clarify arguments advanced in original petition for Writ Certiorari. The Petitioner is asking this Supreme Court for a second chance to review Petitioner's Brief that has demonstrate the lower court's processing error of Federal Law. The lower court error has deprived Petitioner of her Civil Rights 1983 complaint against the local Government whom is a local governmental entity that is being sued in their individual capacities while acting under color of State law. Upon depriving Petitioner of her secured Federal 1983 Civil Right and violation of Petitioner of fourteenth Amendment due process right. Local Government and school boards are "person subject to liability under 42 USC. 1983 for violating Petitioner's federally protected right, and thus are not wholly immune from suit under 1983-statue covering legal as well natural person; local governing bodies can be sued directly under 1983 for monetary, declaratory relief where the action is alleged to be unconstitutional implements or executes policy statement, ordinance, regulation or decision officially adopted and promulgated by that bodies officers; local government officials adopted and promulgated by "person: under federally protected right-in this case the Respondents' whom are a local governmental entity can be sued under a 1983 Civil Rights deprivation and for violation of Petitioner's United States fourteenth due process protection. These and other circumstances in Petitioner's entire brief are grounds not previously presented "R. 44.2.

I. REVIEW THE FEDERAL LAW OF THE FEDERAL RULES OF CIVIL PROCEDURE RULE 56 GROUNDS FOR GRANTING SUMMARY JUDGMENT

The Procedure to Grant Summary on a motion for summary judgment a court grants a motion for summary judgment is "whether the trial court correctly found that there were no genuine issue as to any material fact and that the moving party is entitled to judgment as matter of law." The courts have repeatedly held that summary judgment is to be applied cautiously." Evidence should be "viewed in al light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor. Summary judgment involves only legal question and the existence of any disputed material issue.

The Federal Rules of Civil Procedure 56 ruling for summary judgment is not to be intended to be employed as calendar-cleaning device. See: Smith v. Enocha (1964, SD Miss) 233 F Supp 925, 64-2 USTC 9769, 14 AFTR 2d 5626, affd (1966, CA5 Miss) 359 F2d 924, 66-1 USTC 9378, 17 AFTR 2d 801 (superseded by statue on other grounds as stated in United States v. Hunter (In re Walter (1995, CA6 Ohio) 45 F3d 1023, 32 CBC2d 1456, CCH Bankr L Rptr 76363, 95-1 USTC P 50072, 75 AFTR 2d 821, 1995 FED App 43P).

District Courts are authorized to provide by rule that party desiring oral argument on motion for summary judgment under Rule 56, must apply therefore, in absence of which oral argument will be deemed waived; however, District Court may not by rule otherwise preclude party opposing motion unless motion is denied. Fernhoff v Tahoe Regional Planning Agency (1986, CA9 Nev) 8903 F2d 979.

The Federal Rules of Civil Procedure Rule 56 is a useful

device for unmasking frivolous claims and putting swift end to meritless litigation. See: Quin v Syracuse Model Neighborhood Corp. (1980, CA2 NY) 613 F2d 438. Also, Federal Rules of Civil Procedure Rule 56 is to eliminate frivolous lawsuits which may occasional arise. Black-hawk Heating & Plumbing Co. v Driver (1970) 140 US App DC 31, 433 F2d 1137.

Finally, unless claim is frivolous, court cannot sua sponte enter summary judgment or dismiss complaint without notifying parties of its intentions and allowing them opportunity to cure defect in complaint or respond. English v. Cowell (1993, CA7 III) 10 F3d 434, 144 BNA LRRM 2754, 126 CCH LC 10928, 27 FR Serv 3d 513.

II. GROUNDS TO GRANT REHEAR

The 7th Circuit erred by making a decision of an issue that was never an issue on Appeal or brief in petition. See: Owasso Independent School Dist. No. I 011 v. Falvo, 122, S. Ct, 934, 534, .U.S. 426, 151 L. Ed. 2d 896.

Petitioner appeal to the 7th Circuit was briefed upon grounds that the 7th Circuit reverse and remand case back in District Court under Rule 59 (e) that authorizes relief when a moving party 'clearly establish (es) either a manifest error of law or fact' or 'present (s) newly discovered evidence. See: Souter v. International Union, 993, F 2d 595, 599 (7th Cir. 1993) (Quoting Federal Deposit Ins). The Court of Appeals has explained that there are only three valid grounds for a Rule 59 (e) motion-newly discovered evidence, an intervening change in law, and manifest error in law. Cosgrove v. Bartolotta 150 F .3d 729, 732, (7th Cir. 1998).

In this situation of law, the District Court error is grounds

under 59 (e), for misapprehend Petitioner claims, and misapplied the law to claims in light of the pertinent law. The District Court failed to record Petitioner's motion on the docket that was filed stamped on August 16, 2004, by the Court eighteen pages of material factual evidence that demonstrated a deprivation of Petitioner's 42 U.S.C. 1983 and material evidence that clearly established a violation of Petitioner's fourteenth due process protection.

The Lower Court erred for granting the Respondents' their motion for summary judgment under Rule 56 (e), on November 04, 2004, for not applying Petitioner's eighteen pages of factual material evidence that met the requirement to defeat a summary judgment pursuant to the Federal Rules of Civil Procedure Rule 56 (c).

The lower court Order on June 24, 2004, is of error, Petitioner was to have had a new trial date set if this case has survived the pending summary judgment. The District Court ruled on the Respondents motion for summary not until November 04, 2004. Also, the error of the lower of the court is that on November 02, 2004, the District Court Order set a telephonic status conference for Wednesday January 12, 2005, at 3:30 p.m. before the Magistrate Judge. The court stated that any party shall file any corrections or addition within ten days after receipt of this Order signed by the Magistrate Judge William Hussman Jr.

Petitioner believes this court should vacate their order on November 03, 2008. The lower court's error is erroneous and is inconsistence with the Federal law. The lower, court's decision contains material errors regarding applicable law, thus depriving Petitioner of a meaningful review of her case.

Finally, Petition respectfully asks this Court to grant

Rehearing upon the Respondents' violated Petitioner's Civil Right. Specifically, Petitioner claims that Respondents' actions were "deliberate, willful (sic) and continuing" and were conducted in their individual capacities while acting under color of State Law in a manner that seeks to deprive Petitioner of rights guaranteed by the Constitution of the United State and deprived thereof without due process of law". 42 USC 1983 read that every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privilege, or immunities secured by the Constitution and law, shall be liable to the parties injured in an action at law, suit in equity or other proper proceeding for redress.

Upon review of the record, there is sufficient evidence to raise a genuine issue of material fact as to whether the Respondents' in their individual capacities while acting under color of State Law violated Petitioner's civil right. Petitioner had a right to enjoy her life and liberty of her secured right, not have the Respondents' under false pretense fabricated over ten handwritten child abuse report that have Petitioner investigated by third parties the Child Protection Services and the Evansville Police Department.

The lower court Federal Error of Law deprived Petitioner of her Federal Right of Law of the Federal Rules of Civil Procedure Rule 56 to correct and cure defect that was in her complaint that would have met the requirement of the Federal Rules of Civil Procedure Rule 56 to had Trial set Demand by Jury.

III. REVIEW THE LOWER COURT'S FUNDAMENTAL ERROR OF LAW

This Court should also grant to rehear on grounds upon the fundamental error of the lower courts: First, the District court did not grant the Respondents' their motion for summary judgment for a frivolous complaint. The District Court ruled of error upon Rule 56 (e). The court was under law and could not sua sponte enter summary judgment without given Petitioner the opportunity to correct and cure defect in her complaint that would have allowed Petitioner to bring her complaint action brought under 42 USC 1983 Civil Rights deprivation and violation of Petitioners fourteenth due process protection.

Second, the lower court was authorized to provide by rule that party desiring oral argument on motion for summary judgment under Rule 56 must apply therefore, in absence of which oral argument will be deemed waived; however, the District Court could not rule or otherwise preclude party from requesting oral argument nor deny such request when made by party opposing motion unless motion is denied. On November 04, 2004, the District Court denied Petitioner of her motion for Oral Argument filed on August 2004, that was denied the right to argue that her complaint was defected and needed to be correct and cured that would have asserted over two hundred pages of factual genuine issue of material facts that demonstrated that the Respondents' in their individual capacities while acting under color of state law can be sued for depriving Petitioner of her secured 1983 Civil Right.

Third, the 7th Circuit failed to reverse and remand Petitioner's case back in District Court with instructions upon grounds of a manifest error of law.

The Federal Law provides that a motion filed in the Federal Court has a right to be ruled upon, not left off the record to be docket.

The 7th Circuit did not address this issue, so this Supreme Court must determine whether the record supports Petitioner's brief that the Respondents' in their individual capacities while acting under color of state law action resulted in a violation of Petitioner Civil Right.

CONCLUSION AND PRAYER

The lower court Federal Law of error Petitioner prays is grounds for this Supreme Court to grant this brief for Rehearing and vacate Order on November 03, 2008, that denies writ certiorari and grant writ certiorari.

Respectfully Submitted,

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CERTIFICATE OF PETITIONER

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay, and that is restricted to the grounds specifies in Supreme Court Rule 44.2.

Debra L. Thomas
DEBRA L.THOMAS